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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No. 2184 of 2007

Date of decision:28.8.2007

H.V.P.N.L. and others **...Appellants**

Versus

M/s Goel Udyog-a Parnership Business **...Respondent**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Gaurav Mohunta, Advocate for the appellants.

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RAJESH BINDAL, J.

This is defendants' second appeal against the concurrent findings of fact by both the Courts below whereby suit filed by the respondent-plaintiff for permanent injunction is decreed.

The challenge made by respondent-plaintiff in the suit to the penalty of Rs. 4,08,144/- arbitrary imposed by appellant-defendants on the respondent-plaintiff for alleged theft of energy. Both the Courts below have found that appellant-defendants have miserably failed to justify the imposition of penalty as from the material placed on record, the theft of energy was not proved.

Learned counsel for the appellants submitted that it is a case where on checking conducted on February 27, 1997 by the official of the appellants, two seals out of eight seals were found to be fake, meter and the meter glass were also found to be tampered with. He further submitted that evidence produced by the appellants has not been considered by the Courts below and further it has totally been ignored the fact that the respondent/plaintiff had the remedy of appeal, which was not availed of by him. However, at the time of arguments, learned counsel could not deny the fact that affidavit of Om Singh, E.E.E., filed in evidence though supported the contention made by appellants in written statement, however, in cross-

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examination he totally contradicted what was stated in the affidavit. In addition to this, the plea raised by the appellants that during the course of checking, respondent did not allow them to check the electrical installations cannot be believed as according to them, it was a team of 4-5 officers and in case they were prevented from discharging their official duties, nothing prevented them to take police help, which is not the case of the appellants. Even otherwise, mere on a bald inspection report, which also according to the appellants is under the circumstances, when they were not allowed to check the electrical installations by the respondent, penalty cannot possibly be levied on the respondent. It is further not in dispute that the meter which was alleged to have been tempered with by respondent was not sent to the Laboratory for checking nor any consumption pattern was brought on record to show the consumption of energy before and after the alleged checking. As far as the issue regarding availability of alternative remedy is concerned, the same was not pressed by the appellant before the Courts below. Accordingly, it would be too late in the day to accept this contention of the appellant as no issue was framed on that count in limine.

Accordingly, I do not find any merit in the present appeal and the same is dismissed.

August 28, 2007 **(Rajesh Bindal)**
Pka **Judge**